IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7803 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAFULBHAI BHANJIBHAI POBARU

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR RC KODEKAR AGP for Respondents No. 1, 2 and 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The order of detention dated June 28, 2000 passed by the District Magistrate, Rajkot in exercise of powers conferred on him by sub.section-2 of section-3 of the Prevention of Blackmarketing and Maintenance of Supplies

of Essential Commodities Act, 1980 ("the Act" for short) against the petitioner is the subject matter of the challenge in the present petition which is filed under Article-226 of the Constitution.

2. Having regard to the materials placed before him, the detaining authority was satisfied that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of solvent which is a commodity essential to the community. Therefore, the detaining authority made an order on June 28, 2000 directing to detain the petitioner.

3. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of the order of detention. However, it is not necessary to refer to all of them, except one, which in my opinion, deserves acceptance.

4. The learned counsel for the petitioner submitted that bill books of V.R. Brothers Petrol Pump which are referred to and relied on by the detaining authority with other materials for the purpose of passing detention order are not supplied to the detenu along with grounds of detention and as the right of the detenu to make effective representation guaranteed under Article-22(5) of the Constitution is infringed, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in paragraph-4(E) of the petition.

5. No Affidavit-in-reply has been filed on behalf of the detaining authority, but, Mr. P.R. Shukla, Deputy Secretary to the Government, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed Affidavit-in-Reply on behalf of the State Government controverting the averments made in the petition. Mr. R.C.Kodekar, learned Asst. Government Pleader, after verification from the Officers who are present in the Court, states at the Bar that bill books of V.R. Brothers Petrol Pump though referred to and relied upon by the detaining authority, are not supplied to the petitioner. It is well settled that communication of grounds of detention means that not only the grounds should be communicated to the detenu, but documents and materials which are referred to and relied on by the detaining authority should also be supplied to the detenu so as to enable him to exercise right under Article-22(5) of the Constitution of making representation effectively. In my view, non-supply of bill books of V.R. Brothers Petrol Pump which are relied on by the detaining

authority has deprived the detenu of his right to make representation against the detention order. The continued detention of the detenu, therefore, will have to be held to be illegal.

6. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with reference to other case. Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)
kamlesh*